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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Sung-jin KIM, et al.

Art Unit: 2634

Serial No. 09/909,858

Examiner: Sudhanshu C. PATHAK

Filed: July 23, 2001

Confirmation No. 8771

For: TRANSMISSION ANTENNA DIVERSITY
METHOD, AND BASE STATION APPARATUS
AND MOBILE STATION APPARATUS
THEREFOR IN MOBILE COMMUNICATION
SYSTEM

PETITION UNDER 37 C.F.R. §1.181 TO THE GROUP DIRECTOR OF 2600
TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE OFFICE ACTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

A non-final Action was mailed by the Office in the captioned application on January 5, 2005. The Action was mailed to counsel's former address at 2111 Wilson Boulevard, Suite 1200, Arlington, Virginia 22201, and was returned to the Office by the Postal Service as undeliverable.

Applicants, through undersigned counsel of record, hereby request that the holding of abandonment be withdrawn and that the Action be re-mailed with a new shortened statutory response period, in view of the following facts.

The issue of providing a showing to establish non-receipt of the Action is believed moot in view of the data present in the PTO files evidencing return of the Action by the Postal Service, as "undeliverable". See the attached abbreviated copy of the PTO Action of January 5, 2005, designated Exhibit A, taken from the PAIR database Image File Wrapper wherein the envelope

(page 13) bears the Postal Service notation “return to sender – not deliverable as addressed – unable to forward – return to sender”. No action in response to this returned mail was apparently taken by the Office.

The captioned application was filed on July 23, 2001, with a Declaration/Power of Attorney designating the undersigned as attorney of record at their original address of “2111” Wilson Boulevard. The offices of undersigned counsel moved from “2111” Wilson Boulevard to “1101” Wilson Boulevard in the latter part of 2001. Changes of address were registered with the postal service and individual changes of address were prepared for each pending U.S. patent application. The individual staff member tasked with preparing and filing the individual changes-of-address for each pending application is no longer employed by counsel. However, on information and belief, said staff member made a *bona fide* attempt to submit a separate change-of-address form in each pending application. Additionally, to ensure that all pending applications were associated with counsel’s Customer Number 27849 and counsel’s current mailing address, a further blanket change-of-address was submitted to the USPTO Electronic Business Center (EBC^{*}) on or about June 12, 2003, in which numerous cases were designated. Among these was the captioned application Serial No. 09/909,858. A copy of the listing is attached, as Exhibit B, wherein the instant application has been highlighted.

Regular status checks were conducted using the USPTO PAIR database, in accordance the counsel’s existing docketing procedures. An initial check would have been made on or about January 23, 2003, and periodically thereafter. On March 25, 2004, a formal Status Inquiry was filed by facsimile. Copies of the relevant papers, including the auto-reply receipt, generated from the USPTO on March 25, 2004, are attached as Exhibit C. The PTO failed to reply to the formal Status Inquiry and, based on information appearing in the PAIR database may have failed to match the Status Inquiry with the file.

The follow-up status inquiry docket entry was, through clerical error, entered as 30 months (as opposed to the standard 3-month call up required under counsel’s docketing protocol), whereby the “call up” in counsel’s electronic docket indicated “09/25/2006”. However, on September 26, 2005, while conducting a periodic manual review of the files, the long pendency of the application was noted and a further check of the PAIR database was made at which time

^{*} The EBC was contacted by phone regarding their records for address change submissions. Counsel’s staff was advised that the EBC does not maintain records more than one year following the submission, and accordingly the EBC cannot provide any additional documentation in this regard.

the Action mailed January 5, 2005, was noted. A representative from counsel's office immediately contacted SPE Steven Chin and Examiner Sudhanshu Pathak by telephone regarding further action by the Office to enable counsel to prepare and file necessary petition(s) to reinstate the captioned application to a pending status. Provided as Exhibit D is a printout from counsel's electronic docket showing actions taken during prosecution of the captioned application.


In view of the Rules mandating further action by applicants responsive to the Notice of Abandonment (issued in the instant application on October 4, 2005, after the status of the case was brought to the attention of the Office by applicants' representative), counsel solicits prompt and favorable Action by the Group Director on the instant Petition.

If the Group Director believes that additional discussions, data or information might advance the resolution of this matter, he is invited to contact the undersigned at the telephone number listed below to expedite any outstanding issues.

Respectfully submitted,

LEE & MORSE, P.C.

Date: October 13, 2005


Eugene M. Lee, Reg. No. 32,039

LEE & MORSE, P.C.
1101 WILSON BOULEVARD, SUITE 2000
ARLINGTON, VA 22209
703.525.0978 TEL
703.525.4265 FAX

Attachments:

- Exhibit A: Abbreviated copy of PTO Action of January 5, 2005, including envelope marked "return to sender – not deliverable..." (*Cover + 3 pages*)
- Exhibit B: Printout of Excel® spreadsheet, submitted on disk to EBC (*Cover + 5 pages*)
- Exhibit C: Status Inquiry with PTO receipt of March 25, 2004 (*Cover + 4 pages*)
- Exhibit D: Docket Printout displaying actions by counsel's office respecting ex parte Prosecution (*Cover + 3 pages*)

PETITION and
DEPOSIT ACCOUNT CHARGE AUTHORIZATION

This document and any concurrently filed papers are believed to be timely. Should any extension of the term be required, applicant hereby petitions the Director for such extension and requests that any applicable petition fee be charged to Deposit Account No. 50-1645.

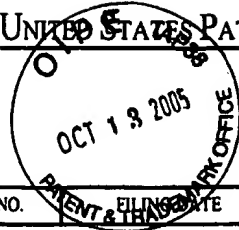
If fee payment is enclosed, this amount is believed to be correct. However, the Director is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 50-1645.

Any additional fee(s) necessary to effect the proper and timely filing of the accompanying-papers may also be charged to Deposit Account No. 50-1645.

EXHIBIT A



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,858	07/23/2001	Sung-jin Kim	249/271	8771

7590

01/05/2005

The Law Offices of Eugene M Lee, PLLC
Suite 1200
2111 Wilson Boulevard
Arlington, VA 22201

EXAMINER

PATHAK, SUDHANSHU C

ART UNIT

PAPER NUMBER

2634

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

09/909,858

KIM ET AL.

Examiner

Art Unit

Sudhanshu C. Pathak

2634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on July 23rd, 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9, 11, 12-15 is/are rejected.
- 7) ☒ Claim(s) 8 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on July 23rd, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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2125 1

11 01/08/05

RETURN TO SENDER
NOT DELIVERABLE TO FORWARD
UNABLE TO SENDER
RETURN



EXHIBIT B

Customer	27849						
LEE & STERBA, P.C.							
1101 WILSON BOULEVARD							
SUITE 2000							
ARLINGTON, VA 22209							
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EXHIBIT C

Transmission Report

Date/Time
Local ID
Local Name
Company Logo

3-25-04; 3:12PM
7035254265
LEE & STERBA, P.C.

This document was confirmed.
(reduced sample and details below)
Document Size Letter-S

LEE & STERBA, P.C. <small>ATTORNEYS AND COUNSELLORS AT LAW</small>		Telephone 703.525.0978 FACSIMILE 703.525.4265 www.lee-sterba.com
1101 Wilson Boulevard Suite 2000 ARLINGTON, VIRGINIA 22209		
► FACSIMILE TRANSMITTAL SHEET ◀		
TO: TECHNOLOGY CENTER 2634		DATE: MARCH 25, 2004
COMPANY: U.S. PATENT AND TRADEMARK OFFICE		
FROM: EUGENE M. LEE, REG. NO. 32,039		
FAX NUMBER: 703-672-9306		TOTAL NO. OF PAGES INCLUDING COVER: 3
OUR REFERENCE NUMBER: 249/271		
In re the Application of		
Sung-jin KIM, et al.		Art Unit: 2634
Serial No. 09/909,858		Examiner: Stephen CHIN
Filed: July 23, 2001		Confirmation No. 8771
For: TRANSMISSION ANTENNA DIVERSITY METHOD, AND BASE STATION APPARATUS AND MOBILE STATION APPARATUS THEREFOR IN MOBILE COMMUNICATION SYSTEM		
Transmitted herewith is/are		
<u>STATUS INQUIRY</u>		
Return receipt, via facsimile [to 703.525.4265], of the above-referenced document(s) is hereby requested.		
<small>THE INFORMATION CONTAINED IN THIS FACSIMILE IS INTENDED FOR THE NAMED RECIPIENT(S) ONLY. IT MAY CONTAIN UNCLASSIFIED AND CONFIDENTIAL INFORMATION, AND IF YOU ARE NOT AN INTENDED RECIPIENT, YOU MUST NOT COPY, REPRODUCE OR TAKE ANY ACTION IN RELIANCE ON IT. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY FACSIMILE OR BY CALLING (703) 525-0978 OR BY E-MAIL, info@lee-sterba.com, AND RETURN THE ORIGINAL TO US BY MAIL. WE WILL REIMBURSE YOU FOR THE POSTAGE.</small>		
LEE & STERBA, P.C.		

Total Pages Scanned : 3 Total Pages Confirmed : 3

No.	Doc	Remote Station	Start Time	Duration	Pages	Mode	Comments	Results
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Notes :

EC: Error Correct	RE: Resend	PD: Polled by Remote	MB: Receive to Mailbox
BC: Broadcast Send	MP: Multi-Poll	PG: Polling a Remote	PI: Power Interruption
CP: Completed	RM: Receive to Memory	DR: Document Removed	TM: Terminated by user
HS: Host Scan	HP: Host Print	FO: Forced Output	WT: Waiting Transfer
HF: Host Fax	HR: Host Receive	FM: Forward Mailbox Doc.	WS: Waiting Send

LEE & STERBA, P.C.

ATTORNEYS AND COUNSELORS AT LAW

1101 Wilson Boulevard
SUITE 2000
ARLINGTON, VIRGINIA 22209

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DATE: MARCH 25, 2004

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FROM: EUGENE M. LEE, REG. NO. 32,039

FAX NUMBER: 703-872-9306

TOTAL NO. OF PAGES INCLUDING COVER: 3

OUR REFERENCE NUMBER: 249/271

In re the Application of

Sung-jin KIM, et al.

Art Unit: 2634

Serial No. 09/909,858

Examiner: Stephen CHIN

Filed: July 23, 2001

Confirmation No. 8771

For: TRANSMISSION ANTENNA DIVERSITY METHOD,
AND BASE STATION APPARATUS AND MOBILE
STATION APPARATUS THEREFOR IN MOBILE
COMMUNICATION SYSTEM

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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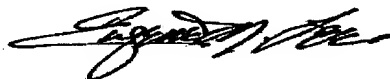
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March 25, 2004

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Eugene M. Lee, Reg. No. 32,039

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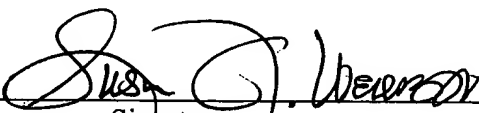
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Susan G. Werhow
Name of Person Signing Certificate

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Matter Number

249/271

Client Reference Number

SI-16086-US

Patent Application

Serial Number

09/909,858

Filing Date

07/23/2001

Filing Jurisdiction

United States of America

Client

Y.P. LEE, MOCK & PARTNERS

Title of Invention

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METHOD, AND BASE STATION APPARATUS
AND MOBILE STATION APPARATUS
THEREFOR IN MOBILE COMMUNICATION

Patent

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Issue Date

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Art Unit

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FPA	File Patent Application									07/23/2001	
RNFM	Response to Notice to File Missing Parts	08/30/2001	2	Months	10/30/2001	10/30/2001	2	Months	10/30/2001	09/19/2001	
IDS	Information Disclosure Statement									09/27/2001	
ROF	Receipt of Official Filing Receipt									10/19/2001	
RNR	Receipt of Notice of Recordation									11/26/2001	
RNOP	Receipt of Notice of Publication									02/15/2002	

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RNOP	Receipt of Notice of Publication									02/15/2002	
STC	Status Check	07/23/2001	18	Months		01/23/2003				04/14/2003	OK in PAIF
STC	Status Check	04/14/2003	2	Months		06/14/2003				10/23/2003	
IDS	Information Disclosure Statement	09/11/2003	3	Months		12/11/2003	3	Months	12/11/2003	10/24/2003	Cite Art fro
STC	Status Check	10/23/2003	3	Months		01/23/2004				03/25/2004	OK in PAIF
XXX	Status Inquiry Filed by FAX									03/25/2004	
STC	Status Check	03/25/2004	30	Months		09/25/2006					

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STC	Status Check	03/25/2004	30	Months		09/25/2006					
REJ	REJECTION (non-Final) - PTO Action	01/05/2005	3	Months		04/05/2005	6	Months			Found in P
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XXX	Notice of Abandonment issued by PTO	10/04/2005	2	Months		12/04/2005					
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